

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LACONIA PROPERTIES LLC.,

Plaintiff,

07 CIV 6220 (LAP)

- against -

ANSWER

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA a/k/a ST PAUL
TRAVELERS INSURANCE COMPANY,

DEFENDANT
REQUESTS TRIAL
BY JURY

Defendant.
-----X

The defendant, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, incorrectly sued herein as "TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA a/k/a ST PAUL TRAVELERS INSURANCE COMPANY", hereinafter referred to as "TRAVELERS", by its attorneys, SPEYER & PERLBERG, LLP, answering the complaint, alleges upon information and belief as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "1" and "2".

2. Denies each and every allegation set forth in paragraph "3", except admits Travelers is a foreign insurance company duly licensed and authorized to transact business in the State of New York and maintains offices in the State of New York.

3. Denies each and every allegation set forth in paragraph "4".

ANSWERING THE FIRST CAUSE OF ACTION

4. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraphs "6", "7", "8" and "9".

5. Denies each and every allegation set forth in paragraphs "12", "14", "15", "16", "17", "18", and "19".

6. Denies each and every allegation set forth in paragraphs "5", "10" and "13", except admits issuance of insurance policy no #1-660-3891B218-TIL-05, and begs leave to refer to the terms and conditions of the original policy when the same is produced by the plaintiff at the trial of this action.

ANSWERING THE SECOND CAUSE OF ACTION

7. In response to paragraph "20", defendant repeats, reiterates and realleges the admissions and denials to the allegations set forth in paragraph "1" through "6" inclusive with the same force and effect as though same were more fully set forth at length herein

8. Denies each and every allegation set forth in paragraphs "23", "24" and "25".

9. Denies each and every allegation set forth in paragraph "21" and begs leave to refer to the terms and conditions of its letter denying coverage.

10. Denies each and every allegation set forth in paragraph "22" except admits issuance of insurance policy no #1-660-3891B218-TIL-05, and begs leave to refer to the terms and conditions of the original policy when the same is produced by the plaintiff at the trial of this action.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

11. The policy sued upon provides, among other terms and conditions:

CAUSES OF LOSS – SPECIAL FORM

SECTION D. ADDITIONAL COVERAGE – COLLAPSE

The term Covered Cause of loss includes the Additional Coverage – Collapse as described in **D.1.**, through **D.5.** below.

1. With respect to buildings, collapse means:
 - a. An abrupt falling down or caving in of a building or any portion of a building with the result that the building or portion of the building cannot be occupied for its intended purpose; or
 - b. A building or any portion of a building that has not abruptly fallen down or caved in, but is in imminent danger of abruptly falling down or caving in, or has suffered a substantial impairment of structural integrity

A building that is standing or any portion of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion unless the building is in imminent danger of abruptly falling down or caving in or has suffered a substantial impairment of structural integrity.

2.
 - a. We will pay for direct physical loss or damage to Covered Property, caused by the collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if the building or any portion of the building is in a state of collapse (as defined in **1.a.**

and b. above) and the state of collapse is caused by:

- (1) A "specified cause of loss" or breakage of building glass;

* * *

b. When a building or any portion of a building has abruptly fallen down or caved in and can no longer be occupied for its intended purpose, we will also pay for any direct physical loss or damage to the Covered Property caused by:

- (1) Decay that is hidden from view, unless the presence of such decay is known to the insured prior to collapse;

* * *

F. DEFINITIONS

* * *

2. "Specified Cause of Loss" means the following: Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment (as defined below); volcanic action; falling objects (as limited below); weight of snow, ice or sleet; water damage (as defined below), all only as otherwise insured against in this Coverage Part.

* * *

- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) that is

located on the described premises
and contains water or steam.

12. The loss alleged in the complaint was not caused by a "specified cause of loss" nor from decay that was hidden from view.

13. By reason of the foregoing, the cause of the loss alleged in the complaint is not a covered loss under the policy sued upon and TRAVELERS is not liable to plaintiff in any manner or in any amount.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

14. The policy sued upon provides, among other terms and conditions:

CAUSES OF LOSS – SPECIAL FORM

B. EXCLUSIONS

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

(1) An ordinance or law that is enforced even if the property has not been damaged; or

(2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

15. The loss alleged in the complaint was caused directly or indirectly by the enforcement of ordinance or law regulating the construction, use or repair of property or requiring the tearing down of property, including the cost of removing its debris.

16. By reason of the foregoing, the cause of the loss alleged in the complaint is excluded from coverage under the policy sued upon and TRAVELERS is not liable to plaintiff in any manner or in any amount.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

17. The policy sued upon provides, among other terms and conditions:

CAUSES OF LOSS – SPECIAL FORM

B. EXCLUSIONS

2. We will not pay for loss or damage caused by or resulting from any of the following:

* * *

d. (1) Wear and tear;

(2) Rust, other corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

* * *

(4) Settling, cracking, shrinking or expansion;

18. The loss alleged in the complaint was caused by or resulted from wear, tear; rust, other corrosion, decay, deterioration, hidden or latent defect or other quality in property that caused it to damage or destroy itself; settling, cracking, shrinking or expansion.

19. By reason of the foregoing, the cause of the loss alleged in the complaint is excluded from coverage under the policy sued upon and TRAVELERS is not liable to plaintiff in any manner or in any amount.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

20. The policy sued upon provides, among other terms and conditions:

CAUSES OF LOSS – SPECIAL FORM

B. EXCLUSIONS

* * *

2. We will not pay for loss or damage caused by or resulting from any of the following:

* * *

f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

21. The loss alleged in the complaint was caused by or resulted from continuous or repeated seepage or leakage of water, or the presence or

condensation of humidity, moisture or vapor, that occurred over a period of 14 days or more.

22. By reason of the foregoing, the cause of the loss alleged in the complaint is excluded from coverage under the policy sued upon and TRAVELERS is not liable to plaintiff in any manner or in any amount.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

23. The policy sued upon provides, among other terms and conditions:

CAUSES OF LOSS – SPECIAL FORM

B. EXCLUSIONS

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** and **3.b.** results in a Covered Cause of Loss, we will pay for the resulting loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in **B.1.** above to produce the loss or damage.

24. The loss alleged in the complaint was caused by or resulted from weather conditions, which contributed with an excluded cause or event to cause the damage.

25. By reason of the foregoing, the cause of the loss alleged in the complaint is excluded from coverage under the policy sued upon and TRAVELERS is not liable to plaintiff in any manner or in any amount.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

26. The policy sued upon provides, among other terms and conditions:

CAUSES OF LOSS – SPECIAL FORM

B. EXCLUSIONS

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** and **3.b.** results in a Covered Cause of Loss, we will pay for the resulting loss or damage caused by that Covered Cause of Loss.

* * *

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Material used in repair, construction, renovation or remodeling; or
- (4) Maintenance; of part or all of any property on or off the described premises.

27. The loss alleged in the complaint was caused by or resulted from faulty, inadequate or defective: repair, construction, renovation, remodeling; material used in repair, construction, renovation or remodeling; or maintenance.

28. By reason of the foregoing, the cause of the loss alleged in the complaint is excluded from coverage under the policy sued upon and TRAVELERS is not liable to plaintiff in any manner or in any amount.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

29. The policy sued upon provides, among other terms and conditions:

CAUSES OF LOSS – SPECIAL FORM

B. EXCLUSIONS

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** and **3.b.** results in a Covered Cause of Loss, we will pay for the resulting loss or damage caused by that Covered Cause of Loss.

* * *

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
 - (2) Design specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Material used in repair, construction, renovation or remodeling; or
 - (4) Maintenance.
- of part or all of any property on or off the described premises.

If an excluded cause of loss that is listed in **3.c.** above results in a Covered Cause of Loss, we will pay for the resulting loss or

damage caused by that Covered Cause of Loss. But we will not pay for:

- (1) Any cost of correcting or making good the fault, inadequacy or defect itself, including any cost incurred to tear down, tear out, repair or replace any part of any property to correct the fault, inadequacy or defect; or
- (2) Any resulting loss or damage by a Covered Cause of Loss to the property that has the fault, inadequacy or defect until the fault, inadequacy or defect is corrected.

30. If TRAVELERS is liable to plaintiff in any manner or in any amount, which is specifically denied, then such liability will be reduced by: the cost of correcting or making good the fault, inadequacy or defect itself, including any cost incurred to tear down, tear out, repair or replace any part of any property to correct the fault, inadequacy or defect; or the resulting loss or damage by a Covered Cause of Loss to the property that has the fault, inadequacy or defect until the fault, inadequacy or defect was corrected.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

31. The loss alleged in the complaint was not caused by a fortuitous event.

32. By reason of the foregoing, TRAVELERS is not liable to plaintiff in any manner or in any amount.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE

33. The policy sued upon provides, among other terms and conditions:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

A. COVERAGE

1. Business Income

a. Business Income means the:

- (1) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- (2) Continuing normal operating expenses incurred, including payroll.

b. Coverage is provided as described and limited below for one or more of the following options for which a Limit of Insurance is shown in the Declarations:

- (1) Business Income including "Rental Value".

c. We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused or result from a Covered Cause of Loss.

G. DEFINITIONS

* * *

4. "Operations" means

- a. Your business activities occurring at the described premises; and
- b. The tenantability of the described premises, if coverage for Business Income including "Rental Value" or "Rental Value" applies

5. "Period of Restoration" means the period of time after direct physical loss or damage caused by or resulting from a Covered Cause of Loss at the described premises which:

a. Begins:

- (1) Unless a different time period is indicated in the Declarations, 72 hours after the time of direct physical loss or damage for Business Income coverage; or
- (2) Immediately after the time of direct physical loss or damage for Extra Expense coverage;

b. Ends on the earlier of:

- (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
- (2) The date when business is resumed at new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or

7. "Rental Value" means Business Income that consists of:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
- b. Continuing normal operating expenses incurred in connection with that premises, including:
 - (1) Payroll; and

- (2) The amount of charges which are the legal obligations of the tenant(s) but would otherwise be your obligations.

8. "Suspension" means:

- a. The partial or complete cessation of your business activities; or
- b. That a part or all of the described premises is rendered untenable, if coverage for Business Income including "Rental Value" or "Rental Value" applies.

34. That there is no coverage for the "business interruption for lost rents" loss or damage claimed in the Complaint because the claimed loss was not caused by nor was a result of a Covered Cause of Loss, and the loss claimed was not due to the necessary "suspension" of the insured's "operation" during the "period of restoration" as these terms are defined in the policy sued upon.

35. By reason of the foregoing, there is no coverage for "business interruption for lost rents" under the policy sued upon.

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

36. The policy sued upon provides, among other terms and conditions:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

A. COVERAGE

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from a Covered Cause of Loss.

* * *

5. Coverage Extensions

Each of these Coverage Extensions is additional insurance unless otherwise indicated.

Unless otherwise indicated in the Declarations or by endorsement, the following Coverage Extensions apply.

* * *

g. Claim Data Expense

You may extend the insurance provided by this Coverage Form to apply to the expense you incur in preparing claim data when we require it. This includes the cost of taking inventories, making appraisals and preparing other documentation to show the extent of loss. The most we will pay for preparation of claim data under this Extension in any one occurrence is \$2,500. We will not pay for:

- (1) Any expenses incurred, directed, or billed by or payable to attorneys, insurance adjusters or their associates or subsidiaries;

37. By reason of the foregoing, the complaint fails to state a cause of action upon which the requested relief of "public adjustor contingency fees" can be granted by this Court.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

38. Defendant repeats, reiterates and realleges each and every allegation contained in paragraph "36" of this Answer with the same force and effect as if set forth at length herein.

39. If TRAVELERS is liable to plaintiff in any manner or in any amount regarding "business interruption for lost rents" as alleged in the complaint, which is specifically denied, then such liability will be diminished by the "Period of

Restoration", which began "72 hours after the time of direct physical loss or damage" and ended on "the date when the property at the described premises should [have been] repaired, rebuilt or replaced with reasonable speed and similar quality".

AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE

40. The policy sued upon provides, among other terms and conditions, for the application of one or more deductibles.

41. If TRAVELERS is liable to plaintiff in any manner or in any amount, which is specifically denied, then such liability shall be reduced in accordance with the terms of the aforementioned deductible provisions.

AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE

42. The policy sued upon provides, among other terms and conditions, for various exclusions, limitations of liability, sublimits of liability and special limits of liability in connection with any claim made by plaintiff.

43. If TRAVELERS is liable to plaintiff in any manner or in any amount, which is specifically denied, then such liability will not exceed the various exclusions, limits of liability, sublimits and special limits of liability set forth in the policy.

AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE

44. The complaint fails to state a cause of action upon which the requested relief of declaratory judgment can be granted by this Court.

AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE

45. The complaint fails to state a cause of action upon which the requested relief of legal fees can be granted by this Court.

WHEREFORE, Defendant, TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: Melville, NY
July 12, 2007

Yours, etc.

SPEYER & PERLBERG, LLP
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By: 

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